



UNITED STATES DEPARTMENT OF EDUCATION

OFFICE OF SPECIAL EDUCATION AND REHABILITATIVE SERVICES

Honorable Kerri L. Briggs
Acting State Superintendent
Office of the State Superintendent
Government of the District of Columbia
441 4th Street, NW
Suite 350N
Washington, DC 20001

JUN - 1 2009

Dear Dr. Briggs:

Thank you for the timely submission of the District of Columbia's (D.C.'s) FFY 2007 Annual Performance Report (APR) and revised State Performance Plan (SPP) under Part B of the Individuals with Disabilities Education Act (IDEA). We also acknowledge the revisions to D.C.'s APR received on April 7, 2009. We appreciate the State's efforts in preparing these documents.

The Department has determined pursuant to section 616(d) of the IDEA that D.C. needs intervention in meeting the requirements of Part B of the IDEA. The Department's determination is based on the totality of the State's data and information, including the State's FFY 2007 APR and revised SPP, other State-reported data, and other publicly available information. See the enclosure entitled "How the Department Made Determinations under Sections 616(d) of the IDEA in 2009" for further details.

Specific factors affecting OSEP's determination of needs intervention for D.C. under Part B of IDEA included that D.C.: (1) did not provide any FFY 2007 data for compliance Indicators 9, 10 (disproportionate representation) and 17 (timeliness of due process decisions); (2) reported 29.15% compliance for Indicator 13 (secondary transition), which represented slippage from the 54% compliance rate last year, and did not demonstrate correction of the noncompliance; and (3) failed to meet the longstanding Special Conditions imposed on its FY 2008 grant under Part B of the IDEA related to the following key requirements for providing a free appropriate public education to children with disabilities: timely initial evaluations and reevaluations, implementation of hearing officer determinations (HODs), placement in the least restrictive environment, and identification and correction of noncompliance.

D.C. has not provided valid and reliable data for compliance Indicators 9 and 10 for three years. OSEP's June 17, 2008 FFY 2006 SPP/APR response table required D.C. to provide the missing data for Indicators 9 and 10 in the FFY 2007 APR. D.C. reported in the FFY 2007 APR that valid and reliable data for FFY 2005 and FFY 2006 are unavailable. D.C. reported it was unable to provide FFY 2007 data on the number of districts that may have had disproportionate representation of racial or ethnic groups in special education and related services or in specific disability categories "due to the lack of valid and reliable data that would allow the State to determine whether there was disproportionate representation." Because this information is unavailable, D.C. reported it "is unable to make any determinations related to potentially inappropriate identification

practices." Disproportionate representation that is the result of inappropriate identification in special education and in specific disability categories are key compliance indicators under the monitoring and enforcement scheme established under section 616 of the IDEA. Without these data, OSEP and the public cannot assess whether any districts have disproportionate representation of racial and ethnic groups in special education and related services and in specific disability categories that was the result of inappropriate identification.

D.C. has not provided valid and reliable data for compliance Indicator 17 for two years. OSEP's June 17, 2008 FFY 2006 SPP/APR response table required D.C. to provide the missing data for Indicator 17 in the FFY 2007 APR. D.C. reported it did not provide FFY 2007 data in the APR because it was determined that "the methods used prior to the August 11, 2008 implementation of the SHO [Student Hearing Office] Docketing System...were inadequately maintained and thus yielded unreliable data" and that it could not submit FFY 2006 data "because of the poor tracking system" in place during the FFY 2006 reporting period. Without these data, OSEP and the public cannot determine the percent of adjudicated due process hearing requests that met the timeline required by 34 CFR §300.515. This is a critical indicator because the issuance of timely final due process decisions is a key component of an effective due process system.

D.C. was required to report the percent of youth aged 16 and above with an individualized education program (IEP) that includes coordinated, measurable, annual IEP goals and transition services that will reasonably enable the student to meet the post-secondary goals. D.C.'s very low level of compliance on this critical indicator (29.15%) demonstrates that D.C. is not ensuring that youth with disabilities aged 16 and above have an IEP that includes the required secondary transition content. In addition, D.C.'s compliance level has decreased from the low FFY 2006 compliance level of 54%. The State reported that one of seven findings of noncompliance identified in FFY 2006 related to this indicator was corrected in a timely manner. This is a critical indicator since inclusion of appropriate postsecondary goals and transition services in a student's IEP enables the student to make a successful transition from school to post-school activities, including postsecondary education, vocational education, integrated employment and independent living.

D.C. also failed to meet the Special Conditions imposed on its FFY 2008 grant award under Part B of the IDEA related to requirements regarding timely initial evaluations and reevaluations, implementation of HODs, and placement in the least restrictive environment. These issues were initially identified in the 1998-2001 Compliance Agreement between D.C. and the Department and have been Special Conditions on each IDEA Part B grant award from 2001 to the present. D.C. failed to meet the Special Condition related to identification and correction of noncompliance that was first imposed on the State's FFY 2005 grant and has continued on each IDEA Part B grant since that time. D.C.'s failure to correct this longstanding noncompliance directly affects the provision of special education and related services to children with disabilities.

OSEP's June 17, 2008 FFY 2006 SPP/APR response table noted that based on several of the reform initiatives described in D.C.'s June 2, 2008 Special Conditions Progress Report, we expected D.C. to make significant progress during the 2008-2009 school year in satisfying the Special Conditions and meeting the requirements of the IDEA. While

information in the three progress reports submitted under the FFY 2008 Special Conditions demonstrates some improvement, D.C. continues to report low levels of compliance with the requirements related to the timeliness of initial evaluations (56%), reevaluations (47.2%) and implementation of HODs (34.54%).

D.C. demonstrates continued noncompliance with the requirements to ensure timely initial evaluations and reevaluations. (Sections 612(a)(7) and 614(a) through (c) of the IDEA and 34 CFR §§300.301(c)(1) and 300.303) D.C. reported in the May 15, 2009 progress report that there were 432 children who had not been provided a timely initial evaluation and placement and 1,149 children who had not been provided a timely reevaluation as of April 18, 2009. The failure to provide a timely initial evaluation results in a delay in the provision of special education and related services to a child identified as a child with a disability, and without a timely reevaluation a child's disability status and the appropriateness of the child's educational goals and progress remain in question.

D.C. demonstrates continued noncompliance with the requirements to ensure due process decisions are implemented in a timely manner. (Sections 615(f) and (i) of the IDEA) D.C. reported in the May 15, 2009 progress report that there were 228 children whose HODs had not been implemented in a timely manner as of April 18, 2009. The failure to implement a HOD in a timely manner results in a child being denied services needed to ensure a free appropriate public education.

D.C. has not implemented a system of general supervision that ensures noncompliance is corrected in a timely manner. (Sections 612(a)(11) and 616(a) of the IDEA, 20 U.S.C. 1232d(b)(3), and 34 CFR §§300.149 and 300.600.) While the State has submitted a local educational agency (LEA) self-assessment and a monitoring manual with the May 15, 2009 progress report and has been working with the Data Accountability Center (DAC) to develop a general supervision system, that system has not yet been implemented. Therefore, OSEP is unable to determine if that system will be effective in identifying and correcting noncompliance. Although the State has reported specific activities undertaken to ensure children with disabilities are placed in the least restrictive environment appropriate to their individual needs, the State has not conducted general monitoring to ensure compliance with the requirements of section 612(a)(5)(A) of the IDEA and 34 CFR §§300.114 through 300.120.

Though not a basis for our determination, we are concerned with the very low levels of compliance reported for FFY 2007 for Indicator 11 (45.3%) on timeliness of initial evaluations and Indicator 15 (15.12%) on timely correction of noncompliance. We also note that due to problems in D.C.'s fiscal and program accountability, management systems, and related areas, the Department designated D.C. a "high risk" grantee under all grants received from the Department. D.C. continues to work on the Department's fiscal and programmatic concerns and its FFY 2009 grant award will again be subject to Department-wide Special Conditions.

Pursuant to section 616(d)(2)(B) of the IDEA and 34 CFR §300.603(b)(2), a State that is determined to need intervention or need substantial intervention, and does not agree with this determination, may request an opportunity to meet with the Assistant Secretary for Special Education and Rehabilitative Services to demonstrate why the Department should

change the State's determination. To request a hearing, D.C. must submit a letter to Andrew J. Pepin, who has been delegated the authority to perform the functions of the Assistant Secretary for Special Education and Rehabilitative Services, at 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600 within 15 days of the date of this letter. The letter must include the basis for your request for a change in the State's determination.

The State's determinations for the FFY 2005 and FFY 2006 APRs also were needs intervention. In accordance with section 616(e)(2) of the IDEA and 34 CFR §300.604(b), if a State is determined to need intervention for three or more consecutive years, the Secretary may require any one or more of the enforcement actions specified under needs assistance in 34 CFR §§300.604(a), and shall take one or more of the following actions: (1) require the State to prepare a corrective action plan or improvement plan if the Secretary determines that the State should be able to correct the problem within one year; (2) require the State to enter into a compliance agreement if the Secretary has reason to believe that the State cannot correct the problem within one year; (3) withhold, not less than 20 percent and not more than 50 percent of the State's funds reserved for State-level activities under section 611(e) of the IDEA for each year of the determination until the Secretary determines that the State has sufficiently addressed the areas in which the State 'needs intervention'; (4) seek to recover Part B funds under Section 452 of the General Education Provisions Act (GEPA); (5) withhold, in whole or in part, any further payments of Part B funds to the State; or (6) refer the matter for appropriate enforcement action, which may include referral to the Department of Justice.

Given the nature of the noncompliance noted in this letter and that D.C. has had Special Conditions placed on its grant award under Part B of the IDEA since 2001, the Department has concluded that D.C. would be unable to correct its problems in one year. D.C. previously entered into a compliance agreement with the Department under the IDEA from 1998-2001, and it did not result in compliance. We therefore feel compelled to take a more serious enforcement action based on the magnitude of the noncompliance with the requirements of Part B of the IDEA and the length of that noncompliance. The Department has significant concerns about D.C.'s inability to correct areas of longstanding noncompliance that directly affect the appropriate provision of special education and related services to D.C.'s children with disabilities. As a result, pursuant to section 616(e)(2)(B)(iii) of the IDEA and 34 CFR §300.604(b)(2)(iii), the Department intends to withhold 20 percent of D.C.'s FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA until D.C. has sufficiently addressed the areas in which it "needs intervention."

In accordance with section 616(e)(4)(A) of the IDEA and 34 CFR §300.605(a), D.C. may request a hearing pursuant to the procedures in 34 CFR §§300.180 through 300.183 to appeal the Department's decision to withhold these funds. To request a hearing, D.C. must submit a letter to Andrew J. Pepin, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600 within 30 calendar days of the date of this letter. Any written submission by a party under 34 CFR §§300.179 through 300.184 must be filed by hand delivery, by mail, or by facsimile transmission. The Secretary discourages the use of facsimile transmission for documents longer than five pages. The filing date under 34

CFR §300.183(a) is the date the document is hand-delivered; mailed; or sent by facsimile transmission. See 34 CFR §300.183(a)-(b).

Pursuant to section 616(e)(4)(B) of the IDEA and 34 CFR §300.605(b), pending the outcome of any hearing to withhold payments, the Secretary intends to suspend payment of 20 percent of D.C.'s FFY 2009 funds reserved for State-level activities under section 611(e) of IDEA. D.C. has the opportunity to show cause in writing why future payments should not be suspended. To show cause, D.C. must submit a letter explaining why funds should not be suspended to Andrew J. Pepin, Office of Special Education and Rehabilitative Services, 400 Maryland Avenue SW, Room 5106, Potomac Center Plaza, Washington, D.C. 20202-2600. Mr. Pepin must receive the letter within 15 calendar days of the date of this letter. If the Department determines that D.C. has failed to show cause why funds should not be suspended, the Department will suspend payment of 20 percent of DC's FFY 2009 funds reserved for State-level activities under section 611(e) of the IDEA.

The Department also is advising the State of technical assistance available related to the following Indicators: 9 and 10 (disproportionate representation); 13 (secondary transition); and 17 (timeliness of due process decisions). A list of sources of technical assistance related to the SPP/APR indicators is available by clicking on the "Technical Assistance Related to Determinations" box on the opening page of the SPP/APR Planning Calendar website at <http://spp-apr-calendar.rrfcnetwork.org/techassistance.html>. You will be directed to a list of indicators. Click on a specific indicator for a list of centers, documents, webinars and other sources of relevant technical assistance for that indicator.

The enclosed table provides OSEP's analysis of the State's FFY 2007 APR and revised SPP and identifies, by indicator, OSEP's review of any revisions made by the State to its targets, improvement activities (timelines and resources) and baseline data in the State's SPP. The table also identifies, by indicator, the State's status in meeting its targets, whether the State's data reflect progress or slippage, and whether the State corrected noncompliance and provided valid and reliable data.

As required by section 616(e)(7) of the IDEA and 34 CFR §300.606, the State must notify the public within the State that the Secretary of Education has taken the above enforcement action, including, at a minimum, by posting a public notice on the agency's website and distributing the notice to the media and through public agencies.

As you know, your State must report annually to the public on the performance of each local educational agency (LEA), i.e., the District of Columbia Public Schools and all charter schools that elect to be treated as LEAs for the purposes of IDEA, located in the State on the targets in the SPP as soon as practicable, but no later than June 2, 2009, pursuant to IDEA section 616(b)(2)(C)(ii)(I) and 34 CFR §300.602(b)(1)(i)(A). In addition, your State must review LEA performance against targets in the State's SPP, determine if each LEA 'meets requirements', 'needs assistance', 'needs intervention, or 'needs substantial intervention' in implementing Part B of the IDEA, and inform each LEA of its determination. For further information regarding these requirements, see the SPP/APR Calendar at: <http://spp-apr-calendar.rrfcnetwork.org/explorer/view/id/656>. Finally, if you included revisions to baselines, targets or improvement activities in your

APR submission, and OSEP accepted those revisions, please ensure that you update your SPP accordingly and that the updated SPP is made available to the public.

In its October 17, 2008 Memorandum 09-02, "Reporting on Correction of Noncompliance in the Annual Performance Report Required under Sections 616 and 642 of the IDEA," OSEP provided Chief State School Officers and Lead Agency Directors with important information regarding: (1) requirements for identifying noncompliance and reporting on the correction of noncompliance in States' APRs; and (2) how OSEP will, beginning with the FFY 2008 APR, due February 1, 2010, consider the correction of noncompliance in making annual determinations for States pursuant to section 616(d) of the IDEA. Most significantly, beginning with our 2010 determinations:

1. OSEP will no longer consider a State to be in substantial compliance relative to a compliance indicator based on evidence of correction of the previous year's noncompliance if the State's current year data for that indicator reflect a very low level of compliance (generally 75% or below); and
2. OSEP will credit a State with correction of noncompliance relative to a child-specific compliance indicator only if the State confirms that it has addressed each instance of noncompliance identified in the data for an indicator that was reported in the previous year's APR, as well as any noncompliance identified by the Department more than one year previously. The State must specifically report, for each compliance indicator, whether it has corrected all of the noncompliance identified in its data for that indicator in the prior year's APR as well as that identified by the Department more than one year previously.

It is important for each State to review the guidance in the memorandum, and to raise any questions with your OSEP State Contact. The memorandum may be found at: <http://spp-apr-calendar.rfcnetwork.org/explorer/view/id/656>.

OSEP is committed to working with D.C. to improve results for children and youth with disabilities. If you have any questions, would like to discuss this further, or want to request technical assistance, please contact Lisa Pagano, your OSEP State Contact, at (202) 245-7413.

Sincerely,



Patricia J. Guard
Acting Director
Office of Special Education Programs

Enclosures

cc: State Director of Special Education